

## **REMARKS**

This responds to the Office Action dated 5 January 2004. Applicant respectfully requests reconsideration of the application in view of the following remarks. Accompanying this response is a Request for Continued Examination under 37 C.F.R. § 1.114. Applicant also requests entry of the §1.131 and §1.132 affidavits of Thomas D. Dickson into the record.

Claim 42 was previously added. Claims 13-29 and 34-40 were previously canceled. Accordingly, claims 1-12 and 41-42 remain pending in the application.

### **Response to Rejection Under 35 U.S.C. § 102**

The Examiner has rejected claims 7 and 41 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,619,901 to Reese et al. Applicant respectfully traverses.

An anticipation rejection is proper only if a single prior art reference discloses each and every element recited in a particular claim. Claim 7 includes a “refrigeration system” element and claim 41 includes a “refrigerated foodstuffs supply line” element. The Examiner argues that the ice supply (element #19 in Figure 2) satisfies these requirements. The Applicant respectfully disagrees.

The term “refrigeration” only has meaning to one of skill in the art of blending devices in reference to a mechanical refrigeration cycle. The attached affidavit of Thomas D. Dickson, who is skilled in the relevant art, supports this assertion. A supply of ice for blending does not constitute a “refrigeration system” nor a “refrigerated foodstuffs supply line” as the term “refrigeration” is understood by one of skill in the art. The ice supply taught by Reese et al. is not designed nor does it function to

refrigerate the contents in the beverage receptacles 20. As shown in Figure 2 of Reese et al., the ice supply may only include a small amount of ice and is not automatically replenished. A small amount of ice such as the one shown in Figure 2 is certainly not a “refrigeration system” as contemplated by one of skill in the art.

For the reasons stated above, and in light of the §1.132 affidavit of Thomas D. Dickson, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 7 and 41 under 35 U.S.C. § 102..

### **Response to Restrictions Under § 103**

The Examiner has rejected claims 1, 4-6, 8-12, and 42 under 35 U.S.C. § 103(a) as being unpatentable over Reese et al. in view of U.S. Patent No. 6,326,047 to Farrell. Applicant respectfully traverses.

Claim 1 includes the following element: “a foodstuffs supply line carrying a foodstuffs, the foodstuffs supply line provided at the blending location to selectively and automatically introduce the foodstuffs into the blending container upon request.” Reese et al. does not disclose a foodstuffs supply line or selectively and automatically introducing foodstuffs into a blending container upon request. The attached affidavit of Thomas D. Dickson confirms that Reese et al. does not disclose a foodstuffs supply line or selectively and automatically introducing foodstuffs into a blending container upon request. What the Examiner has identified in the Office Action as a “liquid supply line (Figure 10B, #41)” in Reese et al. is actually a mixed drink *discharge* port. See Reese et al., col. 5, ll. 57-59. See also §1.132 affidavit of Thomas D. Dickson.

Further, as supported by the affidavit of Thomas D. Dickson, one of skill in the art would have no motivation to combine the teachings of Reese et al. with Farrell or

Frank et al, nor does the combination of Reese et al. with Farrell or Frank et al. arrive at the claimed invention. Reese et al. is directed to precise control of beverage *dispensing*, and does not disclose automatic supply lines. *See* Reese et al. col. 5, ll. 50-55. *See also* §1.132 affidavit of Thomas D. Dickson.

Moreover, claims 1, 11, and 42 recite a pump operatively coupled to the foodstuffs supply line. The Examiner admits that Reese does not include a pump but argues that it would have been obvious to incorporate the pump from Farrell into the device of Reese et al. The proposed combination fails to meet the *prima facie* case for obviousness and is therefore improper. There must be some suggestion or motivation *in the prior art* to make the proposed combination. The Examiner argues that the desire to free up more space in a kitchen or workplace would motivate someone to incorporate pumps into the blending device taught in Reese, yet the Examiner points to nothing *from the references* or even from the knowledge generally available to skilled artisans that suggests his conclusion. Further undercutting the Examiner's argument of obviousness is the fact that Farrell requires the use of hot water to work with its peristaltic pump. *See* Farrell, col. 4, ll. 59 – col. 5, ll. 39. *See also* §1.132 affidavit of Thomas D. Dickson. There is no teaching in Reese et al., Farrell, or any other cited source that would motivate the skilled artisan to combine the hot water supply (with pressure supplied by a peristaltic pump) of Farrell with the features of the Reese et al. blender. *See also* §1.132 affidavit of Thomas D. Dickson. The Examiner has not cited any teaching from either Reese et al. or Farrell or anywhere else that would motivate such a combination. A skilled artisan would not be motivated to combine a foodstuffs refrigeration system or a refrigerated foodstuffs supply line (which the Examiner incorrectly states are taught by Reese et al.) with a pump-operated hot water supply as

taught by Farrell. *See* §1.132 affidavit of Thomas D. Dickson. Moreover, the Examiner has not offered a supportable position as to why skilled artisan in the relevant art would somehow come to the conclusion that adding hot-water pumps from Farrell would free up more kitchen space, nor has the Examiner disclosed where such a motivation has come from, other than the Examiner's personal knowledge or belief, which requires additional support.

Claim 8 includes the following element: "a cleaning liquid supply line provided at the cleaning location to automatically clean the blending container when placed within the cleaning location." The term "automatic" means the absence of human intervention to one of skill in the art. *See* §1.132 affidavit of Thomas D. Dickson. Manual operation of a warm-water sink spigot does not constitute "automatic" to one of skill in the art. As admitted by the Examiner, neither Reese et al. nor Farrell disclose a cleaning location, a cleaning liquid supply line, or any automatic cleaning. The Examiner also "recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art." Nevertheless, the Examiner does not cite any teaching from either Reese et al. or Farrell or from the "knowledge generally available to one of ordinary skill in the art" that suggests a cleaning location, cleaning liquid supply line, or automatic cleaning, or in fact any teaching that would motivate a combination of the two references. Applicant reminds the Examiner that the cleaning locations, etc. comprise part of "a blending station apparatus" recited in the preamble to claim 8, they do not stand alone like a sink and spigot do. Therefore, in the absence of any reference disclosing claimed limitations

or a reference describing a motivation to combine teachings, Applicant respectfully requests that the Examiner submit an affidavit in accordance with 37 CFR §1.104(d)(2) substantiating each of the obviousness allegations. The applicant also requests opportunity to contradict the Examiner's affidavit as prescribed by the rule.

The Examiner indicates that with regard to claims 4-6, the phrases "wherein the foodstuffs comprise..." are ignored because they have no "patentable weight." The Examiner fails to provide any supportable reasoning for ignoring the claim language. Claims 4-6 are not even method claims as indicated by the Examiner, they are apparatus claims. Therefore, Applicant requests the rejection of claims 4-6 be withdrawn. The Examiner does not even allege that any reference renders claims 4-6 obvious or anticipated as required for a proper claim rejection. The Examiner is not permitted to simply reject claims by ignoring recited limitations.

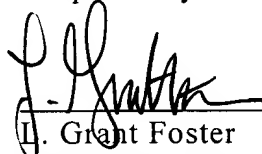
Claims 2-3 are rejected over Reese et al. in view of Frank et al. Frank et al. is not prior art to the present invention, as evidenced by the §1.131 affidavit of Thomas D. Dickson. Moreover, there is no motivation to the skilled artisan to combine the teachings of Frank et al. with Reese et al. The Examiner has not alleged any motivation *from the references* or anywhere else that would motivate a combination. In addition, there are no common or individual teachings in either Reese et al. or Frank et al. that would give the skilled artisan a reasonable expectation of successfully combining the two. Reese et al. discloses a quick-blending drink machine with multiple drink dispensers. Frank et al. teaches a single-flavor, slow-freezing drum. *See* §1.132 affidavit of Thomas D. Dickson.

For the reasons stated above, and in light of the §1.131 and §1.132 affidavits of Thomas D. Dickson, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-6, 8-12, and 42 under 35 U.S.C. § 103.

Applicant has made a good-faith effort to resolve all matters with respect to the present application. Applicant respectfully requests a favorable action on the merits. If there are any matters yet to be resolved in connection with this application, Applicant requests the Examiner to telephone the undersigned attorney to expedite the handling of this matter.

Date: 25 JUNE 2004

Respectfully submitted,



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